

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36073

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 677
	)	
Plaintiff-Respondent,	)	Filed: November 16, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
ADOLFO AVILA-ZALGUERO,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

---

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Jon J. Shindurling, District Judge.

Judgment of conviction and unified sentence of ten years, with a minimum period of confinement of three years, for battery with the intent to commit a serious felony, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

---

Before LANSING, Chief Judge; GRATTON, Judge;  
and MELANSON, Judge

---

PER CURIAM

Adolfo Avila-Zalguero was charged with two counts of lewd conduct with a minor, but pled guilty to an amended charge of battery with the intent to commit a serious felony. I.C. §§ 18-903(b), 18-911. The district court sentenced Avila-Zalguero to a unified term of ten years, with a minimum period of confinement of three years. Avila-Zalguero filed an I.C.R 35 motion, which the district court denied. Avila-Zalguero appeals.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State*

*v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Next, we review whether the district court erred in denying Avila-Zalguero's Rule 35 motion. A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *Lopez*, 106 Idaho at 449-51, 680 P.2d at 871-73. Upon review of the record, we conclude no abuse of discretion has been shown.

Therefore, Avila-Zalguero's judgment of conviction and sentence, and the district court's order denying Avila-Zalguero's Rule 35 motion, are affirmed.